

Attorney's Docket No. W-4001 (Continuation of Continuation) **PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Anticipated Classification of this application:

Class \_\_\_\_\_ Subclass \_\_\_\_\_

Prior application:

Examiner: Victor Hwang

Art Unit: 3764

Box Patent Application  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**TRANSMITTAL OF FILING UNDER 37 CFR ~~1.60(b)~~ AMENDED 1.53(b)**

**WARNING:** A c-i-p (continuation-in-part) cannot be filed under 37 CFR 1.60.

**WARNING:** Filing under 37 CFR 1.60 is permitted only if filed by the same or less than all the inventors named in the prior application. 37 CFR 1.60(b)(3).

**WARNING:** The filing of an application at the United States stage of an International Application requires an oath or declaration. 37 CFR 1.61(a)(4).

**WARNING:** The claims of this new application may be finally rejected in the first Office action where all claims of the new application are drawn to the same invention claimed in the earlier application and would have been properly finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application. MPEP § 706.07(b).

This is a request for filing a

☒ Continuation

☐ Divisional

Continuation

application under 37 CFR 1.60, of pending prior/application

Serial No. 09/ 069,057 filed on April 28, 1998

(Date)

of DENNIS L. KEISER

(Inventor(s))

for EXERCISING APPARATUS

(Title of invention)

**CERTIFICATION UNDER 37 CFR 1.10**

I hereby certify that this 37 CFR 1.60 request and the documents referred to as attached therein are being deposited with the United States Postal Service on this date August 31, 2001 in an envelope as "Express Mail Post Office to Addressee" service under 37 CFR 1.10, Mailing Label Number EM440646575US addressed to the: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Rodney K. Worrel

(type or print name of person mailing paper)

(Signature of person mailing paper)

NOTE: Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. (37 CFR 1.10(b)).

**WARNING:** Certificate of mailing (first class) or facsimile transmission procedures of 37 CFR 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

(37 CFR ~~1.60(b)~~ [4-3]—page 1 of 8)

Amended 1.53(b)

"09/069,057" 09/069,057

NOTE: 37 CFR 1.60 permits the omission of a declaration only if the prior application was complete as set forth in 37 CFR 1.51(a), namely, the prior application comprised at least (1) a specification, including a claim or claims; (2) a declaration; (3) drawings when necessary; and (4) the prescribed filing fee. Accordingly, as presently worded, 37 CFR 1.60 does not permit this procedure to be used where the prior application is pending but only the processing and retention fee required by 37 CFR 1.21(f) is paid or where the declaration was not filed.

## 1. Copy of Prior Application as Filed Which is Attached

NOTE: Under 37 CFR 1.60, practice signing and execution of the application by the applicant may be omitted provided the copy is supplied by and accompanied by a statement by the applicant or his or her attorney or agent that the application papers comprise a true copy of the prior application as filed and that no amendments referred to in the declaration filed to complete the prior application introduced new matter therein.

NOTE: This statement need not be verified if made by an attorney registered to practice before the PTO. (37 CFR 1.60(b)).

- ☒ I hereby verify that the attached papers are a true copy of what is shown in my records to be the above identified prior application, including the oath or declaration originally filed (37 CFR 1.60).

The copy of the papers of prior application as filed which are attached are as follows:

- ☒ 49 page(s) of specification  
☒ 15 page(s) of claims (with 46 claims)  
☒ 1 page(s) of abstract  
☒ 9 sheet(s) of drawing (copies of original drawings)

(also complete part 6 below if drawings are to be transferred)

- ☒ 5 pages of declaration and power of attorney  
(If the copy of the declaration being filed does not show applicant's signature, because the attorney's records do not contain a copy of the signed declaration actually filed for the application, indicate thereon that it was signed and complete the following:)

- ☐ in accordance with the indication required by 37 CFR 60(b), my records reflect that the original signed declaration showing applicant's signature was filed on \_\_\_\_\_  
☐ the amendment referred to in the declaration filed to complete the prior application and I hereby state, in accordance with the requirements of 37 CFR 1.60(b), that this amendment did not introduce new matter therein.

## 2. Amendments

**WARNING:** "The claim of a new application may be finally rejected in the first Office action in those situations where (1) the new application is a continuing application of, or a substitute for, an earlier application, and (2) all the claims of the new application (a) are drawn to the same invention claimed in the earlier application, and (b) would have been properly finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application." MPEP § 706.07(b).

- ☐ Cancel in this application original claims \_\_\_\_\_ of the prior application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)

(37 CFR ~~1.60(b)~~ [4-3]—page 2 of 8)  
Amended 1.53(b)

- ☐ A preliminary amendment is enclosed. (Claims added by this amendment have been properly numbered consecutively beginning with the number next following the highest numbered original claim in the prior application.)

NOTE: Only amendments reducing the number of claims or adding a reference to the prior application (Rule 1.78(a)) will be entered before calculating the filing fee and granting the filing date. 37 CFR 1.60(b).

NOTE: "When filing under Rule 1.60 retain at least one original claim from the patent application to assure a complete application." Notice of March 3, 1986 (1064 O.G. 37-38).

### 3. Petition for Suspension of Prosecution for the Time Necessary to File an Amendment

NOTE: Where it is possible that the claims on file will give rise to a first action final for this continuation application and for some reason an amendment cannot be filed promptly (e.g., experimental data is being gathered) it may be desirable to file a petition for suspension of prosecution for the time necessary).

(check the next item, if applicable)

- ☐ There is provided herewith a Petition To Suspend Prosecution For The Time Necessary to File An Amendment (New Application Filed Concurrently).

### 4. Information Disclosure Statement

(check this item, if applicable)

- ☒ An information disclosure statement is submitted herewith.

### 5. Fee Calculation (37 CFR 1.16)

CLAIMS AS FILED				
Number filed	Number Extra		Rate	Basic Fee 37 CFR 1.16(a)
				<del>\$710.00</del>
Total				\$710.00
Claims (37 CFR 1.16(c))	46	-20= 26	×	\$ 18.00
				<del>\$ 22.00</del>
				\$468.00
Independent				\$80.00
Claims (37 CFR 1.16(b))	2	-3= 0	×	<del>\$74.00</del>
				0
Multiple dependent claim(s), if any (37 CFR 1.16(d))				\$270.00
	1	+		<del>\$230.00</del>
				\$270.00

- ☐ Fee for extra claims is not being paid at this time. (37 CFR 1.16(d))

NOTE: If the fees for extra claims are not paid on filing they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency. 37 CFR 1.16(d).

Filing Fee Calculation

\$ 1,448.00

### 6. Small Entity Status

- ☒ A verified statement that this filing is by a small entity:
- ☐ is attached
- ☒ has been filed in the parent application and such status is still proper and desired (37 CFR 1.28(a))

Filing Fee Calculation (50% of above) \$ 724.00

NOTE: Any excess of the full fee paid will be refunded if a verified statement is filed within 2 months of the date of timely payment of a full fee then the excess fee paid will be refunded on request. 37 CFR 1.28(a).

(37 CFR 1.56(b) [4-3]—page 3 of 8)  
Amended 1.53(b)

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NOTE: 37 CFR 1.28(a), last sentence states: "Applications filed under § 1.60 or § 1.62 of this part must include a reference to a verified statement in a parent application if status as a small entity is still proper and desired."

7. Drawings

- ☒ Drawings are enclosed
- ☒ formal (copies of original drawings)
- ☐ informal

**WARNING:** DO NOT submit original drawings. A high quality copy of drawings should be supplied when filing a patent application. The drawings that are submitted to the Office must be on strong, white, smooth, and non-shiny paper and meet the standards of § 1.84. If corrections to the drawings are necessary, they should be made to the original drawings and a high-quality copy of the corrected original drawing then submitted to the Office. Only one copy is required or desired. Comments on proposed new 37 CFR 1.84. Notice of March 9, 1988 (1090 O.G. 57-62).

NOTE: "Identifying indicia, if provided, should include the application number or the title of the invention, inventor's name, docket number (if any), and the name and telephone number of a person to call if the Office is unable to match the drawings to the proper application. This information should be placed on the back of each sheet of drawing a minimum distance of 1.5 cm. (5/8 inch) down from the top of the page." 37 C.F.R. 1.84(c)).

8. Priority—35 U.S.C. 119

- ☐ Priority of application Serial No. 0 / \_\_\_\_\_ filed on \_\_\_\_\_ in \_\_\_\_\_ is claimed under 35 U.S.C. 119. (country)
- ☐ The certified copy has been filed in prior U.S. application Serial No. 0 / \_\_\_\_\_ on \_\_\_\_\_
- ☐ The certified copy will follow.

9. Relate Back—35 U.S.C. 120

- ☒ Amend the specification by inserting before the first line the sentence:
- "This is a
- ☒ continuation
- ☐ divisional
- Continuation  
of copending/application(s)
- ☒ Serial number 09/ 069,057 filed on 4/28/98"
- ☐ International Application \_\_\_\_\_ filed on \_\_\_\_\_ and which designated the U.S."

NOTE: The proper reference to a prior filed PCT application which entered the U.S. national phase is the U.S. serial number and the filing date of the PCT application which designated the U.S.

10. Inventorship Statement

NOTE: If the continuation or divisional application is filed by less than all the inventors named in the prior application a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application. 37 CFR 1.60(b) [emphasis added].

(complete appropriate items (a) and (b))

- (a) With respect to the prior copending U.S. application from which this application claims benefit under 35 USC 120 the inventor(s) in this application is (are):

(complete applicable item below)

- ☒ the same  
☐ less than those named in the prior application and it is requested that the following inventor(s) identified above for the prior application be deleted:

(type name(s) of inventor(s) to be deleted)

- (b) The inventorship for all the claims in this application are

- ☒ the same  
☐ not the same, and an explanation, including the ownership of the various claims at the time the last claimed invention was made, is submitted.

#### 11. Assignment

- ☒ The prior application is assigned of record to

KEISER CORPORATION

- ☐ An assignment of the invention to \_\_\_\_\_

is attached. A separate ☐ "COVER SHEET FOR ASSIGNMENT (DOCUMENT) ACCOMPANYING NEW PATENT APPLICATION" or ☐ FORM PTO 1595 is also attached.

NOTE: "If an assignment is submitted with a new application, send two separate letters - one for the application and one for the assignment." Notice of May 4, 1990 (1114 O.G. 77-78).

NOTE: When an assignee files a . . . divisional application (under . . . 1.60 . . . ) reference may be made to a statement filed under 37 CFR 3.73(b) in the parent application, or a copy of that statement may be filed. Notice of April 30, 1993, 1150 O.G. 62-64.

#### 12. Fee Payment Being Made At This Time

- ☐ Not Enclosed  
☐ No filing fee is submitted. (This and the surcharge required by 37 CFR 1.16(e) can be paid subsequently).  
☒ Enclosed  
☒ basic filing fee \$ 724.00  
☐ recording assignment (\$40.00; 37 CFR 1.21(h)) (See attached "COVER SHEET FOR ASSIGNMENT ACCOMPANYING NEW PATENT APPLICATION".)  
☐ processing and retention fee (\$130.00; 37 CFR 1.53(d) and 1.21(l)) \$ \_\_\_\_\_

NOTE: 37 CFR 1.21(l) establishes a fee for processing and retaining any application which is abandoned for failing to complete the application pursuant to 37 CFR 1.53(d) and this, as well as the changes to 37 CFR 1.53 and 1.78 indicate that in order to obtain the benefit of a prior U.S. application, either the

basic filing fee must be paid or else the processing and retention fee of \$ 1.21(l) must be paid within 1 year from notification under § 53(d).

Total fees enclosed

\$ 724.00

13. Method of Payment of Fees

- ☒ Enclosed is a check in the amount of \$ 724.00
- ☐ Charge Account No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_  
A duplicate of this request is attached.

NOTE: Fees should be itemized in such a manner that is clear for which purpose the fees are paid. 37 CFR 1.22(b).

14. Authorization To Charge Additional Fees

**WARNING:** If no fees are being paid on filing do not complete this item.

**WARNING:** Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges if extra claim charges are authorized.

- ☒ The Commissioner is hereby authorized to charge the following additional fees which may be required by this paper and during the entire pendency of the application to Account No. 23-3185
- ☒ 37 CFR 1.16 (a), (f) or (g) (filing fees)
- ☒ 37 CFR 1.16 (b), (c) and (d) (presentation of extra claims)

NOTE: Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims cancelled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 CFR 1.16(d)) it might be best not to authorize the PTO to charge additional claim fees, except possibly when dealing with amendments after final action.

- ☐ 37 CFR 1.17 (application processing fees)

**WARNING:** While 37 CFR 1.17(a), (b), (c) and (d) deal with extensions of time under § 1.136(a) this authorization should be made only with the knowledge that: "Submission of the appropriate extension fee under 37 CFR 1.136(a) is to no avail unless a request or petition for extension is filed." [emphasis added]. Notice of November 5, 1985 (1060 O.G. 27).

- ☐ 37 CFR 1.18 (issue fee at or before mailing Notice of Allowance, pursuant to 37 CFR 1.311(b)).

NOTE: Where an authorization to charge the issue fee to a deposit account has been filed before the mailing of a Notice of Allowance, the issue fee will be automatically charged to the deposit account at the time of mailing the notice of allowance. 37 CFR 1.311(b)).

NOTE: 37 CFR 1.28(b) requires "Notification of any change in status resulting in loss of entitlement to small entity status must be filed in the application . . . prior to paying or at the time of paying . . . issue fee." From the wording of 37 CFR 1.28(b): (a) notification of change of status must be made even if the fee is paid as "other than a small entity" and (b) no notification is required if the change is to another small entity.

15. Power of Attorney

- ☒ The power of attorney in the prior application is to  
Rodney K. Worrel

27,475

(Attorney)

(Reg. No.)

- a. ☒ The power appears in the original papers in the prior application.
- b. ☐ Since the power does not appear in the original papers, a copy of the power in the prior application is enclosed.
- c. ☐ A new power has been executed and is attached.
- d. ☒ Address all future communications to

Amended 1.53(b)  
(37 CFR ~~1.60(b)~~ [4-3]—page 6 of 8)

Rodney K. Worrel  
 WORREL & WORREL  
 St. Croix Professional Center  
 2109 W. Bullard Avenue, Suite 121  
 Fresno, California 93711-1258

(item d may only be completed by applicant, or attorney or agent of record)

16. Maintenance of Copendency of Prior Application

(This item must be completed and the papers filed in the prior application if the period set in the prior application has run.)

- ☒ A petition, fee ~~and response~~ has been filed to extend the term in the pending prior/application until September 13, 2001.  
 Continuation

NOTE: The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the papers constituting the filing of the Continuation Application. Notice of November 5, 1985 (1060 O.G. 27).

- ☒ A copy of the petition for extension of time in the prior application is attached.

17. Conditional Petition for Extension of Time in Prior Application

(complete this item and file conditional petition in the prior application if previous item not applicable)

- ☐ A conditional petition for extension of time is being filed in the pending parent application.

NOTE: The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the paper constituting the filing of the continuation application. Notice of November 5, 1985 (1060 O.G. 27).

- ☐ A copy of the conditional petition for extension of time in the prior application is attached.

18. Abandonment of Prior Application (if applicable)

**WARNING:** (Do not complete this item if the application being filed is a divisional of the prior application which is not being abandoned)

NOTE: "A registered attorney or agent acting under the provisions of § 1.34(a), or of record, may also expressly abandon a prior application as of the filing date granted to a continuing application when filing such a continuing application." 37 CFR 1.138.

- ☒ Please abandon the prior/application at a time while the prior application is pending or when the petition for extension of time or to revive in that application is granted and when this application is granted a filing date so as to make this application copending with said prior application.

19. Notification in Parent Application of the Filing of This Continuation Application

- ☒ A notification of the filing of this continuation is being filed in the prior Continuation ~~parent~~ application from which this application claims priority under 35 USC § 120.

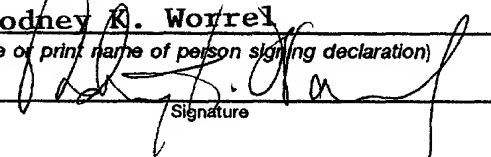
20. Statement by Assignee (if applicable)

- ☒ In accordance with 37 CFR 3.73, I have reviewed the evidentiary documents establishing ~~my~~/our ownership of the application identified herein, and certify that to the best of ~~my~~/our knowledge and belief, title is with ~~me~~/us who seek to take action.

- ☐ Assignment submitted herewith for recordal

I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the

like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Rodney K. Worrel  
(type or print name of person signing declaration)  
  
Signature

August 31, 2001  
Date

2109 W. Bullard Av., Ste 121  
(P.O. Address of Signatory)  
Fresno, CA 93711-1258

- ☐ Inventor
- ☐ Assignee of complete interest
- ☐ Person authorized to sign on behalf of assignee
- ☒ Attorney or agent of record
- ☐ Filed under Rule 34(a)

Tel. No. : (559 ) 431-4391  
Reg. No. 27,475  
(if applicable)

(complete the following if applicable)

KEISER CORPORATION  
(Type name of assignee)

2470 S. Cherry Avenue  
(Address of assignee)  
Fresno, California 93706

President  
(Title of person authorized to sign on behalf of assignee)

Assignment recorded in PTO on  
March 15, 1995  
Reel 7415  
Frame 675-679

The statement under 37 CFR 3.73(b)

- ☒ has been filed in the parent application.
- ☒ a copy of the statement previously filed in the parent application is attached.



Attorney's Docket No. W-3749**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**In re application of: **DENNIS L. KEISER**Serial No.: **09 / 069,057**Group No.: **3764**Attorney No. 13173Filed: **April 28, 1998**Examiner: **Victor Hwang**For: **EXERCISING APPARATUS**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**COPY****NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO THE BOARD  
OF PATENT APPEALS AND INTERFERENCES**Applicant hereby appeals to the Board from the decision of the Primary Examiner mailed  
November 13, 2000 finally rejecting claims 6-9, 14, 18-24 and 50-58.

The item(s) checked below are appropriate:

**1. STATUS OF APPLICANT**

This application is on behalf of

☐ other than a small entity.☒ a small entity.

A verified statement

☐ is attached☒ was already filed on April 28, 1998**2. FEE FOR FILING NOTICE OF APPEAL**

Pursuant to 37 CFR 1.17(e) the fee for filing the Notice of Appeal is:

☒ small entity ~~\$135.00~~ ~~\$150.00~~ **\$155.00**☐ other than a small entity ~~\$270.00~~ **\$300.00**Notice of Appeal fee due \$ 155.00**CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8a)**

I hereby certify that this correspondence is, on the date shown below, being:

**MAILING**☒ deposited with the United States Postal  
Service with sufficient postage as first class  
mail in an envelope addressed to the  
Commissioner of Patents and Trademarks,  
Washington, D.C. 20231  
Date: 5/11/01**FACSIMILE**☐ transmitted by facsimile to the  
Patent and Trademark Office

Signature

Rodney K. Worrel

(type or print name of person certifying)

### 3. EXTENSION OF TERM

NOTE: The time periods set forth in 37 CFR 1.191 are subject to the provision of § 1.136 for patent applications 37 CFR 1.191(d). (But see 37 CFR 1.645 for extension of time in interference proceedings and 37 CFR 1.550(c) for extension of time in reexamination proceedings).

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136 apply.

- (a) ☒ Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/> one month	\$110.00	\$55.00
<input type="checkbox"/> two months	<del>\$360.00</del> \$	<del>\$180.00</del> \$
<input checked="" type="checkbox"/> three months	<del>\$840.00</del> \$	<del>\$420.00</del> \$ 445.00
<input type="checkbox"/> four months	<del>\$1,320.00</del> \$	<del>\$660.00</del> \$
		Fee \$ 445.00

If an additional extension of time is required please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☐ An extension for \_\_\_\_\_ months has already been secured and the fee paid therefor of \$\_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$445.00

or

- (b) ☐ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

### 4. TOTAL FEE DUE

The total fee due is:

Notice of Appeal fee \$ 155.00

Extension fee (if any) \$ 445.00

TOTAL FEE DUE \$ 600.00

### 5. FEE PAYMENT

- ☒ Attached is a check in the sum of \$ 600.00

- ☐ Charge Account No. \_\_\_\_\_ the sum of \$\_\_\_\_\_.

A duplicate of this transmittal is attached.

(Notice of Appeal from the Primary Examiner to Board [9-6]—page 2 of 3)

